



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: ) Attorney Docket No. 087522785134  
Kottman, Mark A. ) HON Reference No. 02-I-0190  
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Application No.: 09/684,462 )  
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Filed: October 6, 2000 )  
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For: MODULAR WALL PANEL )  
CONSTRUCTION )  
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Examiner: Horton, Yvonne Michele )  
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Art Unit: 3635 )  
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Confirmation No.: 3279 )

REMARKS

New claims 9-20 have been added to the application so that claims 1-6 and 8-20 are in the application.

Claims 1-3 and 8 stand rejected under section 103 as being unpatentable over Sykes, No. 4,905,428 ('428) in view of either Seiber et al. No. 5,899,036 ('036) or Bullwinkle No. 5,901,512 ('512). This rejection is respectfully traversed. The Office Action states that the '428 patent includes a pair of recesses 41, 151 in registry with a threaded member 146 so that a tool vertically inserted into the apertures 41, 151 can be rotated.

As shown by reference to FIGS. 2 and 3 of the '428 patent, the cutout 151 is in a vertical oriented wall so that the axis of the cutout is horizontally directed, and the recess 41 has no space for a tool. The nut 148 is inserted into the recess 41 and the rail is crimped so that the nut fits "snugly" and remains stationary. The bolt 146 is threaded into the nut and adjustment is made by rotating the head 152 with a wrench or like tool which enters through the cutout 151 horizontally and not vertically. (See column 9, lines 28-50 of the '428 patent.)

Claim 1 of the application includes the limitations of an aperture "overlying a threaded member and having an axis aligned with a longitudinal axis of said threaded member" and "inserting a rotary tool vertically through said aperture". Claim 8 includes similar language, "each aperture vertically aligned above an adjustment member, said aperture having an axis disposed parallel to an axis of said adjustment member" and "inserting a rotary tool vertically through said aperture".

The rectangular cutout 151 of the '428 patent is not vertically aligned above the bolt 146 so that a tool is not inserted vertically. Rather, the cutout receives tools horizontally through the cutout.

The recess 41 of the '428 patent does not operate by receiving any tool and is supposed to be "non-rotatable."

The adjustment members shown in the '036 and '512 patents are all adjustable from under the wall structure. There are no vertically aligned tool receiving apertures.

Thus, even if all of the cited references were combined, they do not include all of the limitations, nor teach or suggest them, now existing in claims 1 and 8 and therefore do not make claims 1 and 8 obvious under section 103.

Claims 4-6 stand rejected under section 102 based upon a patent to Welch No. 5,381,994 ('994). This rejection is also respectfully traversed. The '994 patent does not teach every limitation found in independent claim 4 and further the Office Action has mistakenly identified some elements which are disclosed in the '994 patent. In particular, the Office Action identifies the bottom of bolt 60 as a threaded sleeve SL. The item which is marked SL is not identified as a threaded sleeve as opposed to an integral part of the threaded leg 60 where the thread ceases and

the leg becomes a square cross-section shank to which a disk shaped foot is attached. More specifically, however, the '994 patent describes the structure of its universal base as follows:

"Brackets 50 (see FIGS. 2, 4 and 5) are secured between top member 30 and bottom member 40 by inserting rivets or similar fasteners (not shown) through a pair of holes 36 and 59 and a pair of holes 46 and 59. Brackets 50 are secured between top member 30 and bottom member 40 so as to be rotatable about their vertical axis. . .A thrust nut 70 is threaded onto each leg 60, washer 80 is positioned over the outer threads of the thrust nut 70 [sic], and retainer nut 90 is threaded onto the outer threads of thrust nut 70 [sic]. Each leg is then positioned in a pair of slots 34 and 44 such that the foot of leg 60 is below bottom member 40(,) and top member 30 is between the support face of thrust nut 70 and washer 80. Retainer nut 90 is then tightened onto thrust nut 70 so as to clamp top member 30 between them. In this position top member 30, bottom member 40 and brackets 50 are suspended on legs 60 as a single unit."

Claim 4 includes a limitation of a "connector attached to said base rail and to said lower member". The threaded leg 60 of the '994 patent is only attached to the top member 30 but not to the bottom member 40. The threaded leg 60 passes through slot 44 but does not attach to the bottom member 40. The bottom member 40 is suspended from the top member 30. If, as is done in the Office Action, the leg 60 and the nut 70 are the connector/adjustment member, then the limitations in claim 4, that the connector is "attached to said base rail and to said lower member" and that the "threaded stem including a tool receiving upper end portion", and that "a tool receiving aperture in said lower member aligned vertically above said tool receiving upper end portion" are not found.

The bracket 50 of the '994 patent, however, attaches to the top member 30 and to the bottom member 40. But, claim 4 also includes the limitation that the connector have a threaded sleeve. The bracket 50 of the '994 patent has no threaded sleeve. The only threaded sleeves mentioned in the '994 patent are the thrust nut 70 and the retainer nut 90. As mentioned above, there is no teaching that the item labeled SL is a threaded sleeve or that the threaded leg 60 adjusts vertically relative to SL. Instead, adjustment in the '994 patent is made by rotating the threaded leg 60 relative to the thrust nut 70.

The top member 30 in the '994 patent includes slots 34 but there is no teaching that the slot 34 is a tool receiving aperture. The teaching of the '994 patent is that the threaded leg 60 is received in the slot but there is no teaching regarding a tool. Finally, there is no teaching that the slot is aligned vertically above the upper end portion of the threaded leg 60. It is quite apparent from FIGS. 2 and 5 of the '994 patent that the slot 34 is located below the upper end portion of the threaded leg 60.

It is well settled that unless a single reference contains all of the limitations set forth in a claim, that reference cannot properly anticipate the claim. Or, stated in another way, the 102 reference must have all of the elements of the invention functioning in the same way. This is not shown. First, not all of the elements are present and those elements that are present, like the aperture 33, 44, which the Office Action states "can inherently receive a tool" in fact do not function in that fashion.

In view of the above comments, the Examiner is respectfully requested to reconsider her rejections and pass the application to allowance.

The new claims include the same distinguishing limitations as are found in claims 1, 4 and 8. Favorable review of those claims is also respectfully sought.

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Respectfully submitted,

  
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